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Will The South Fire on Fort Sumter Again?

Chief Justice Warren, like Jackson and Lincoln before him, is moving toward a showdown with the State of South Carolina. But where Jackson and Lincoln could call out troops, the Supreme Court must rely on the intangible of respect for law. The decision Warren handed down for a unanimous court in the segregation cases is disappointing, but understandable. The Chief Justice is pressing hard for de-segregation, but wants to avoid a frontal collision with the intransigents of the South. He aims to give the racists space and time for retreat rather than risk driving them into a corner where they might turn and impair the Court by demonstrating its impotence. So the Chief Justice carefully avoided putting any deadline in the new decision, indeed decided even against a formal decree.

There is this much to be said for Warren and his colleagues when measured against the earlier crises on the tariff and slavery. Jackson was much milder in public than in private. While the Union was upheld, the tariff to which South Carolina and the other cotton States objected was reduced. Lincoln and the Republicans went further. In their effort to avoid a sectional conflict, they put through Congress in March 1861 a constitutional amendment which would have forbidden the Federal government ever to abolish slavery. Jackson and Lincoln were both "appeasers" by contrast with Warren. In the face of threats from the South to abolish public schools altogether, the Supreme Court has reaffirmed "the fundamental principle that racial discrimination in public education is unconstitutional" and declared that "all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle." This is no surrender.

If "Forthwith" Was Disobeyed?

The NAACP and the CIO had urged the Court to order compliance "forthwith." The Department of Justice had counseled a more moderate course. It suggested that the cases be remanded to the lower courts with a decree requiring the defendant States to submit within 90 days "a plan for ending, as soon as feasible, racial segregation of pupils in public schools." Were no plan submitted and approved, the lower courts were "forthwith" to order "admission of the plaintiffs and other children similarly situated to non-segregated public schools at the beginning of the next school term." The Court apparently was afraid to go that far. What would happen if a "forthwith" order was disobeyed? How would the order be enforced in sections of the country where the courts, the Federal marshals, the press and the dominant whites are in favor of segregation? How much would respect for law count?

So the court decided that discretion was the better part of adjudication. They did not even order the immediate complainants admitted to school, as a kind of token first payment. Instead they remanded the cases to the district courts with in-

structions "that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954 ruling." Once a start has been made, an extension of time may be allowed but the burden will be upon the defendants "to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest possible date." The Court retains jurisdiction and the South Carolina, Virginia and Kansas cases were heard by three judge special statutory courts from which a direct appeal to the Supreme Court is provided. The Supreme Court avoids a direct showdown at the price of allowing considerable foot-dragging. Its strategy is to wear down the opposition slowly. While progress is made in the border States, the Southern States will be shamed into action and slowly harried by litigation to defeat. So the Justices no doubt hope.

White Man's Court

This inglorious Fabian strategy is hardly on a level with the constitutional and equitable principles the Court invokes. But this is a white man's court in a white man's country, striving to carry out successfully the most difficult kind of revolution—the destruction of old habits and cherished hates, on behalf of a minority, against a majority. The idol of our time, the Common Man, is the despot here. Few in the North were concerned about slavery and few are concerned about segregation, though it begins to burn the brand of inferiority into the Negro child from the day he enters a separate school whether in the segregated South or in the "unsegregated" North. Fostered racial inferiority pays off for the white man North and South by holding the Negro down to menial jobs and menial wages. Not social conscience but the growing and often decisive power of the marginal Negro vote is reflected in the decision. Against that background, it is an achievement.

This perspective, coming from a white man, may seem smug to a black. Why must his children wait on a "creeping equality?" The racially lopsided "option" system in the District of Columbia schools shows how readily de-segregation may be defeated and delayed in the absence of some more specific direction from the Supreme Court. The brief *amicus curiae* by the State of Florida disclosed the ingenuity with which some Southern legalists are already planning to nullify the decision without appearing to disobey it. A generation of heartache, of costly appeal, interminable litigation and tortuous argument, may easily be foreshadowed by the Court's politic vagueness. But it is our prediction that in the end Southern intransigents will speed up the process by some burst of folly so blatant that it will mobilize against them the indifferent white majority. At the very moment the abolitionists were in despair over the betrayal of their hopes by Lincoln, it was the South which opened fire on Fort Sumter.

Major Dent in America's Own Iron Curtain: Einstein Executor Wins Suit

State Dept. (First Time in History) Ordered to Issue Passport

America's own iron curtain is in process of being dented. On June 1, Federal District Judge Henry A. Schweinhaut signed the first passport order of its kind in American history. Declaring angrily, "The State Department cannot overrule the Supreme Court," Judge Schweinhaut ordered Secretary of State John Foster Dulles immediately to issue Dr. Otto Nathan a passport "of the standard form and of the standard duration." An appeal was at once taken to the Circuit Court by the State Department, for if Judge Schweinhaut's order is upheld the Department's arbitrary, dilatory and secretive passport practices must be drastically revised.

The economist Dr. Nathan has been trying for two years to get a passport and for two months to make the State Department obey an earlier order of Judge Schweinhaut's for a genuine hearing on his passport appeal. On May 19 he filed an additional affidavit in support of a motion to adjudge the Secretary of State in contempt. This pointed out that Dr. Nathan was sole executor of Einstein's will and in this capacity wanted to attend the Jubilee of Relativity Theory Conference in Switzerland in July.

Einstein Made No Difference

This new factor was not without effect on the Court. The State Department refuses passports for travel in cases where it thinks a trip abroad would not be in the public interest. Dr. Nathan's inability to attend the jubilee would create an international scandal. Judge Schweinhaut asked the Department of Justice attorney handling the case for the State Department, "Does the fact that Nathan has been named executor of Einstein's estate make any difference to the State Department?" Counsel for the government answered lamely, "Your Honor . . . I have not heard anything from the State Department that would make any difference."

The Nathan case, argued by Leonard Boudin of New York and Joseph Forer of Washington, promises to become a milestone in the long battle to make the State Department obey the Bauer decision (106 F. Supp. 445). This test case, brought by the American Civil Liberties Union, decided three years ago that the State Department could not deny or revoke a passport without a real hearing.

Dr. Nathan's lawyers contend the hearing offered by the Department does not give the applicant the right to know the precise charges against him, or to confront and cross-examine hostile witnesses. Government counsel again admitted before Judge Schweinhaut last Wednesday that "confidential material" was used which "could not be disclosed to the applicant or his counsel." The Judge thereupon decided this did not constitute a real hearing, that his order of last March 15 had not been obeyed and issued a new order requiring the

Department to give Dr. Nathan a passport immediately.

The passport division has been having a hard time of it. In April a House Appropriations subcommittee released testimony showing that Livingston T. Merchant, Assistant Secretary of State for European Affairs, had testified that Russia was having "some success" in Europe and Asia with a campaign to blame the U. S. for "maintenance of an Iron Curtain between the East and West." Mr. Merchant said the Russians had adopted a new policy of permitting more visitors to enter and allowing more Russians to leave.

Cain Scared Them

Early in May former Senator Harry P. Cain of the Subversive Activities Control Board threw a fright into the passport division by appearing at a hearing on behalf of a 65-year-old retired Interior Department employee who had been denied a passport to attend the World Congress of Pythagoreans in Athens in July. (Pythagoras was considered subversive 2500 years ago.) Like Dr. Nathan, Mrs. Gale had signed a non-Communist affidavit but had been denied a passport on a variety of charges, including one that she had put up Scott Nearing at her home overnight! At the end of the hearing, the passport officer was so flustered by Cain's presence that he decided there and then that no appeal was necessary. The woman received her passport next day.

Lattimore Got His Passport

On May 20, the Department after weeks of delay issued a passport for Owen Lattimore and his wife just in time to make it possible for him to keep a speaking date at Oxford, the first of a series scheduled for him by European universities and learned societies. Fear of court action, and unpleasant publicity at home and abroad, seems in that case to have outweighed fear of the China lobby crowd in Congress who have long been hounding the famous scholar and writer.

Finally the American Civil Liberties Union will within a few days file a series of test suits in the District of Columbia against the passport division. Patrick M. Malin, the ACLU's executive director, released correspondence with Scott McLeod turning down its request for a conference on passport and visa problems. Malin claims that the Department's regulations actually discriminate against non-Communists, "since apparently only persons accused of Communism have a right to appeal to the Passport Appeals Board; persons denied passports for other reasons have no right whatsoever to appeal to the Board." We hope shortly to provide a summary of the ACLU correspondence and cases. Thanks to a rising volume of suits and protests, Americans whose views the Department dislikes may yet recover the right to travel.

Diplomatic Follies at Foggy Bottom *

How the State Dept. Reacted to Its First Passport Order

Q. Henry, is the Department going to comply with Judge Schweinhaut's order to issue a passport to Dr. Nathan over the week-end?

A. I can make no comment on that subject at all.

Q. Has the Department been officially notified of this matter?

A. I cannot comment.

Q. Do you expect to be able to comment later, perhaps, on it?

A. I cannot discuss it.

Q. Henry, has he been given a hearing on his passport application?

A. I cannot discuss it.

Q. Will the Department comply with this order?

A. I said I could make no comment on it.

Q. Has there been any precedent where the State Department has been given a court order to do something?

A. I can make no comment on this order at all.

Q. Is it a question of security which prevents any comment on your part?

A. That will have to be left at the moment to the discretion of the Department.

—Daily press briefing with State Dept. official spokesman, May 27.

* The area in which the State Department building is now located at 24th and Virginia Avenue, Washington, D. C., was known locally as "Foggy Bottom." Rarely has any official area been so aptly named in advance.

Washington Less Happy in Private than Public About Eden's Victory

Dramatic Offer of Settlement in Far East Now Expected

Dramatic changes are in the offing in the Far East. What Krishna Menon seems to have sold Peking was the idea of "internationalizing" the Formosan crisis. The UN would take over from the U. S. the task of protecting Formosa, thus saving Washington's face. There would be a cease-fire and a promise not to attack the island. But with the UN rather than the U. S. in control, Peking could be satisfied that the island would no longer be used as a hostile base and the way would be cleared for the eventual liquidation of the Chiang regime by a plebiscite or some similar device. Peking, by co-operating with the UN, would clear the way to its admission.

This prospect, much welcomed in London and Paris, has created gloom in Washington. Here a strong sector of military opinion, though indifferent to Chiang's fate and against war with China, wants nonetheless to hold on to Formosa as a U. S. base. At this point Chiang's partisans and most of the Pentagon find common ground. The military and the dominant forces at State, especially Dulles, are opposed to any "relaxation of tension"—the former see it as a menace to military budgets, the latter believe the longer a settlement is delayed, the harder the bargain which the Soviet bloc can be driven to accept. So there is no jubilation here over the release of the four fliers; poisonous stories are "leaked" to favored reporters about Menon being pro-Communist and being built up deliberately by Peking, etc. And the President was primed to cast doubt on the motives of the release and to suggest that we would not give up Quemoy and Matsu. Washington is fighting a rear guard action against a settlement.

In this situation the State Department regards Sir Anthony Eden and the British election with a dour eye. Our press outdid itself in nonsense about both. The election itself was a typical postwar "normalcy" affair, with little to choose between the two parties and the electorate indifferent to politics in its general contentment with recovery. But just as both parties are (reluctantly) committed to German rearmament so both are (enthusiastically) committed to four power talks. In this Eden, especially an Eden strengthened by the election, will be more difficult for Washington to handle than a Laborite. Eden is blamed here rather than Churchill for blocking action at Dienbienphu last year, and Dulles came back from Bangkok disturbed because Eden favors restoring Quemoy and Matsu as part of a cease-fire. Eden is also, unlike Dulles, for "substantive" talks at the summit conference. Historically, Britain's Tories, though less vocal about it, have been more independent of the U. S. than the Laborites, despite their Bevanite fringe. Sir Anthony, it is feared here, intends some vigorous brokerage for peace in both Europe and Asia.

While the European press went too far in inferring from Eisenhower's remarks two weeks ago that he might favor an armed neutral Germany, it is also wrong to assume that the

U. S. is firmly committed against such a solution. The Dulles press conference on this subject (May 24) deserves more careful examination. Dulles said he was authorized by the President to say that his remarks were not to be interpreted as implying acceptance of a role of neutrality for the Federal German Republic. But when Dulles was then asked whether this meant that "our position at the summit meeting will be one of opposition to any neutrality for a unified Germany," Dulles gave an evasive answer. Later in the conference, Dulles said he did not think the German people or the Soviet people or the West European people want to see applied to Germany the concept of it being an independent State with an unlimited army. So far as we know this is the first time Dulles has ever suggested there were dangers in rearming Germany. He must feel hard-pressed to fall back on so demagogic an appeal.

Eisenhower's decision to address the UN meeting in San Francisco was a defeat for Dulles and the State Department which would have liked (1) to keep the President away from the scene of exploratory talks among the powers, and (2) to play down the United Nations. Dulles wants to reduce Eisenhower's role in any talks to little more than a decorative one, and fears the UN's initiative in peace talks.

Khrushchev's crass opening remarks at Belgrade blaming Beria and other "enemies of the people" for the attacks on Tito may prove to have been his biggest blunder in Belgrade. The Yugoslav Communists are nostalgic for the fold but have grown too sophisticated for the kind of drivel Moscow expects its followers to swallow without a grimace.

An important victory for civil liberties was the Supreme Court's announcement last week that it will hear the appeal against the order requiring the Communist party to register under the McCarran (Internal Security) Act. The order is the trigger which will finally put the Act into effect, and confront anyone who cannot prove he is not a Communist with possible loss of passport, deprivation of jobs in defense-connected facilities and prosecution for failure to register.

Counsel for Lattimore filed a supplemental memorandum with the Court of Appeals last Wednesday citing the Quinn decision (see text in our last week's issue) observation in which Chief Justice Warren set out the limits on Congressional power to investigate. "Stated bluntly," Lattimore's lawyers said, "this is new law" and went on to argue that it provided new grounds for dismissing the indictment against him since the McCarran committee went beyond those limits in its interrogation of Lattimore.

As we go to press, former Senator Cain is about to appear as a witness against loyalty probe excesses before the Johnston committee. Watch next week's issue for a full report.

Diplomatic Follies at Foggy Bottom

How the State Dept. Reacted to Russia's Acceptance of 4-Power Parley

Q. Are we happy that they [the Russians] have accepted this thing [the Western invitation to a 4-power talk] even under the terms with which they did accept it?

A. Well, Mr. [Donald J.] Gonzales [United Press] said at the beginning that he wished to deal in substantive matters. I do not think I should get into subjective states of mind.

Q. You mean you refuse to say whether we are glad that they accepted it?

A. Have I stopped beating my wife!

Q. Are we unhappy about it?

Q. And does Mr. Gonzales set the rules of the conference?

Q. [By Mr. Gonzales] If he does, I declare happiness is

a substantive matter.

Q. Thank you, sir.

A. I will have to leave that to the President of the State Department Correspondents Association. Some days—

Q. I really think that it is a legitimate question of whether or not we are glad they accepted it.

A. I cannot make any comment on a question of that sort.

* * *

Q. Won't you go as far as Mr. Molotov did and say that you take a positive attitude toward their acceptance?

A. We take a positive attitude toward their acceptance.

—Daily press briefing with State Dept. official spokesman, May 26.

Exclusive: China Lobbyist Hoist On His Own Petard**Kohlberg Complains Rules Against Red China Trade Unfair**

For some strange reason not a single daily newspaper has seen fit to tell the story of Alfred Kohlberg and his 30,800 dozen embroidered linen handkerchiefs.

Kohlberg has told the story himself in a complaint he has just filed with the U. S. District Court in Washington. And it is hard to believe that the experienced reporters who cover the court could have overlooked something so richly ironic. For what it amounts to is that Kohlberg, a wealthy textile importer as well as one of the most influential of the China Lobbyists—indeed a man who insists that he is the China Lobby—has been unable to convince the Customs Bureau that he is not trying to import merchandise made in Red China.

His administrative remedies and perhaps his patience exhausted, Mr. Kohlberg has now sued Secretary of the Treasury George M. Humphrey in an attempt to force a showdown on what he considers unfair import rules.

Back in 1952, Mr. Kohlberg says, he bought a quantity of linen in Belfast, Ireland, and had it shipped out to the British Colony of Hong Kong, where in October of that year, his agent, Henry Chang, arranged for its manufacture into handkerchiefs.

Linen Handkerchiefs Are "Red" Handkerchiefs

The rest of the story is a tortuous account of a man caught in a web of regulations. And it was probably no consolation to him to know he helped prepare the ground for those regulations. For in April, 1952, the Bureau of Customs, with the Treasury Department's approval, issued instructions designed to cut off imports from Communist China and North Korea. Custom collectors were told that from then on, "merchandise of a type which was historically imported from China" (and linen handkerchiefs were specifically named as such merchandise) "would be presumed to be of Chinese origin" unless an importer obtained a special license from the Foreign Assets Control by presenting evidence to rebut the government's "presumption."

About a year after the linen first reached Hong Kong, Kohlberg applied for a license to import the finished handkerchiefs and claims he presented the necessary evidence to obtain one. But his application was denied on the ground that "importations from Hong Kong of embroidered linens should be authorized only when goods have been properly certified under Comprehensive Certificate of Origin procedures."

When Kohlberg attempted to get his goods certified he found himself tangled in another set of precautionary measures. This time it was the "certificate of origin" procedures referred to in the denial. These procedures were established

on Sept. 29, 1953 by agreement between the Treasury and the government of Hong Kong. On October 25, 1954 Kohlberg applied for such a certificate and was turned down. It seems the procedures made no provision for granting a certificate to anyone who began to manufacture linen handkerchiefs in Hong Kong before Sept. 21, 1953. Mr. Kohlberg had begun to manufacture his handkerchiefs about a year too soon.

A Possible \$90,000 Loss

That is not the end of his story. In Nov. 1954, fearing the outbreak of a war in the Far East, he managed to get an export license from the Hong Kong government and shipped the handkerchiefs to the Foreign Trade Zone of the Port of New York. They are still in the warehouse there. Caught in the net of rules, Kohlberg cannot import them into this country. He cannot export them anywhere else, either. And the delays, he claims, are causing him "irreparable injury." The handkerchiefs are beginning to depreciate in value. Their style and design are being outmoded and the linen may become discolored. All in all, he says he stands to lose \$90,000.

Stoutly he insists he made a special trip to Hong Kong to be sure the handkerchiefs were being manufactured according to regulations. Resolutely he declares that at no time have China or North Korea or "nationals" of either of those suspect countries had any interest in the handkerchiefs.

And in a passage of his complaint that probably sounds more querulous than his attorneys meant it to, he cries "the standards for obtaining a Comprehensive Certificate of Origin from the Hong Kong government are arbitrary and discriminatory because it is impossible for the plaintiff to comply with the requirement that the manufacture of said handkerchiefs must have commenced subsequent to Sept. 21, 1953."

Mr. Kohlberg, from all accounts, has approached his task of "lobbying" for the Nationalist Chinese government with an ardor that makes it clear it is work he finds much to his liking. Before his suit is finished he may learn, with peculiar force, that business and pleasure do not mix.

For Philadelphia Area Readers

The Emergency Civil Liberties Committee is holding an all day public meeting, "A Rebirth of Freedom," at the Broadwood Hotel in Philadelphia Saturday, June 11, to be addressed, among others, by Senator Langer, Ernest Mazey of the UAW-CIO, Goldie Watson, John Ciardi, Wm. Gailmor, and IFS. Philadelphia Area readers are invited to attend.

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